FILED
08 JUL 25 PM 3:34
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

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Attorneys for Defendants
COUNTRYWIDE FINANCIAL CORPORATION; BANK OF AMERICA CORPORATION; ANGELO MOZILO; DAVID SAMBOL; STANFORD KURLAND; and CARLOS GARCIA

[Additional Counsel Listed in Signature Block]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation; BANK OF AMERICA, a Delaware corporation; ANGELO MOZILO, an individual; DAVID SAMBOL, an individual; STANFORD KURLAND, an individual; CARLOS GARCIA, an individual; DOES 1-200, and ROES 1-500, inclusive,

Defendants.

Case No. '08 CV 1348 BLM

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1331, 1334, 1441(b), 1446, & 1452 (FEDERAL-QUESTION AND BANKRUPTCY JURISDICTION)

(San Diego County Superior Court Case No. 37-2008-00088176-CU-BT-CTL)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that defendants Countrywide Financial Corporation, Bank of America Corporation,[1] Angelo Mozilo, David Sambol, Stanford Kurland, and Carlos Garcia (collectively, "Defendants") hereby remove to this Court the state court action described below on the bases of federal-question jurisdiction and bankruptcy jurisdiction.

BACKGROUND

1. On July 23, 2008, Michael J. Aguirre, acting in his official capacity as City Attorney for the City of San Diego, commenced an action in the name of the People of the State of California ("Plaintiff") in the Superior Court of the State of California for the County of San Diego entitled *People of the State of California v. Countrywide Financial Corp., et al.*, Case No. 37-2008-00088176-CU-BT-CTL. Pursuant to 28 U.S.C. § 1446(a), a copy of the complaint and all pleadings and papers filed in this action is attached as Exhibit "A".

2. Although Plaintiff has not yet served any Defendant with a copy of the complaint or summons from the state court, all Defendants consent to and join in this notice of removal.

3. Defendants have timely filed this notice of removal pursuant to 28 U.S.C. § 1446(b).

4. Venue for removal is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the United States District Court for the Southern District of California embraces the Superior Court of the State of California for the County of San Diego, the forum in which the removed action was pending.

5. Concurrently with the filing of this Notice, Defendants will file a copy of the Notice of Removal in Civil Action No. 37-2008-00088176-CU-BT-CTL in the Superior Court of the State of California for the County of San Diego.

[1] Although the case caption names "BANK OF AMERICA, a Delaware corporation" as a defendant, the body of the complaint indicates Plaintiff's intention to sue Bank of America Corporation. (*See* Complaint ¶ 8.)

BASES FOR REMOVAL JURISDICTION

6. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 and is one that may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(b) in that Plaintiff asserts claims that will necessitate the adjudication of substantial, disputed questions of federal law.

7. Additionally, this action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1334 and is one that may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1452 in that Plaintiff asserts claims that arise under or relate to a case under title 11 of the United States Code.

FEDERAL-QUESTION JURISDICTION

8. Plaintiff's complaint asserts claims that necessitate resolution of substantial, disputed questions of federal law, including but not limited to the Truth-in-Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.*, and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 *et seq.* A determination of whether Plaintiff may recover for the conduct described in its complaint will necessarily turn on substantial, disputed questions of federal law. Hence, there is federal-question jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331.

9. Federal-question jurisdiction is available in actions involving state-law claims where those claims necessarily involve the resolution of underlying disputed questions of federal law. *See, e.g.*, *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 315-16 (2005) (affirming federal-question jurisdiction over state quiet-title action based on need to resolve predicate issue under federal Internal Revenue Code); *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 841 (9th Cir. 2004) (federal question removal jurisdiction proper where state lawsuit turns upon defendant's compliance with a federal regulation).

10. Plaintiff's complaint asserts a purportedly state-law claim that requires resolution of substantial, disputed questions of federal law. Among other allegations, Plaintiff asserts that Defendants "fail[ed] to provide clear and balanced information"

concerning the loans at issue. (Complaint ¶ 68(d).) Although pled as a state-law claim, California statutes defining the standards relevant to Plaintiff's Unfair Competition claim incorporate federal-law standards. In order to prove a violation of state law in an area governed by TILA or RESPA, a plaintiff is required to plead and prove conduct that established that defendants violated federal law. *See, e.g.*, Cal. Civ. Code § 2958 ("A disclosure is not required under this article [governing purchase money liens on residential property], to a purchaser when that purchaser is entitled to receive, a disclosure pursuant to the Federal Truth-In-Lending Act . . . [or] the Real Estate Settlement Procedures Act . . . "); Cal. Fin. Code § 50308 ("If any person engaged in the business regulated by this division [of the California Residential Mortgage Lending Act] refers in any advertising to rates of interest, charges, or costs of loans, the commissioner shall require that they are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. . . . Compliance with the requirements of the federal Truth in Lending Act and Regulation Z promulgated thereunder is presumed to satisfy the requirements of this section."); Cal. Bus. & Prof. Code § 10240.

11. Here, to prove an entitlement to relief on the claim that Defendants inadequately disclosed the terms of the loans alleged in the complaint, Plaintiff will have to prove that Defendants violated TILA, a federal statute. "The declared purpose of [TILA] is 'to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.'" *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998) (quoting 15 U.S.C. § 1601(a)). "Accordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights." *Id.* (citing 15 U.S.C. §§ 1631, 1632, 1635, 1638). Among the matters governed by TILA that are of particular relevance to this case are the disclosure of the terms under which interest rates adjust, the possibility of negative amortization, and credit advertising generally.

12. Plaintiff also alleges that the corporate Defendants "created and adopted an incentive compensation system that induced brokers and sales representatives to engage in predatory lending practices." (Complaint ¶ 56.) Specifically, Plaintiff alleges that "the Company's brokers and sales representatives earned a greater commission by placing a borrower in a sub-prime loan. Brokers received commissions of 0.50% of the loan's value versus 0.20% on loans one step up the quality ladder, known as Alternate-A loans." (*Id.*) Thus, Plaintiff alleges that the compensation paid to brokers was not reasonably related to the value of the brokerage services that were actually performed.

13. These allegations require the application of RESPA, which provides, in pertinent part, that "[n]o person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan *other than for services actually performed*." 12 U.S.C. § 2607(b) (emphasis added); *see also* 12 U.S.C. § 2607(a) ("No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person."). The federal agency with enforcement authority under RESPA, the Department of Housing and Urban Development, has issued detailed guidance concerning the propriety of yield spread premiums and the Ninth Circuit has approved and applied that guidance as definitive. *See Schuetz v. Banc One Mortgage Corp.*, 292 F.3d 1004, 1014 (9th Cir. 2002) (upholding "Real Estate Settlement Procedures Act (RESPA) Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers," 64 Fed. Reg. 10080, 10085 (March 1, 1999) and "Real Estate Settlement Procedures Act Statement of Policy 2001-1: Clarification of Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b)," 66 Fed. Reg. 53052 (October 18, 2001)).

14. Accordingly, when conduct is governed by TILA or RESPA, a plaintiff's right to relief under state law necessarily depends on the application or construction of

federal law. Such state claims, therefore, arise under federal law. *Grable*, 545 U.S. at 315.

15. Indeed, other courts have found that when the conduct at issue is governed by TILA or RESPA, a plaintiff's right to relief under a state unfair competition law necessarily depends on the application or construction of federal law. *Jackson v. South Holland Dodge, Inc.*, 755 N.E. 2d 462, 470 (Ill. 2001) (affirming dismissal of Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") complaint because defendant complied with TILA); *Lanier v. Assocs. Fin., Inc.*, 499 N.E. 2d 440, 445 (Ill. 1986) (affirmed dismissal of plaintiff's ICFA claim because the complaint failed to state a claim under TILA); *Johnson v. Matrix Fin. Servs. Corp.*, 820 N.E. 2d 1094, 1103-04 (Ill. App. Ct. 2004) (affirming dismissal of ICFA claim because complaint failed to allege a violation of RESPA); *Fiore v. First Amer. Title Ins. Co.*, No. 05-cv-474, 2006 U.S. Dist. LEXIS 60952, at *9 (S.D. Ill. Aug. 28, 2006) (dismissing ICFA claim because the complaint did not allege facts sufficient to support a claim under RESPA).

16. Because Plaintiff's state-law claims necessarily involve the resolution of underlying substantial, disputed questions of federal law, federal-question jurisdiction is appropriate.

17. There is also a significant federal interest in the adjudication of these claims in a federal rather than state forum. *Grable*, 545 U.S. at 314. Furthermore, the exercise of federal-question jurisdiction here will not "disturb any congressionally approved balance of federal and state judicial responsibilities." To the contrary, TILA and RESPA each authorize a private right of action in certain circumstances. *See, e.g.*, 16 U.S.C. §§ 1635, 1640 (TILA); 12 U.S.C. §§ 2607, 2614 (RESPA). This demonstrates that there is a significant federal interest in adjudicating this type of dispute in federal court. *Grable*, 545 U.S. at 317-18 (existence of a federal private right of action weighs in favor of federal question jurisdiction, while absence weighs against) (citing *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986)). Second, disputes under Section 17200 of the California Business & Professions Code are routinely litigated in federal court. Finally, several

putative consumer class actions recently have been filed and are pending in federal court against Defendants alleging claims under Section 17200 for violating disclosure laws and requirements based on conduct that is similar or identical to that alleged in the complaint. *See, e.g.*, *Hursh v. Countrywide Financial Corporation*, Case No. 08 CV 1313-J-NLS (S.D. Cal.). Judicial economy weighs in favor of this Court's exercising federal-question jurisdiction here as *Hursh* involves the same core factual allegations and the same causes of action as Plaintiff's complaint.[2]

18. Thus, there is a significant interest in having these federal issues adjudicated in a federal forum, and removal of this action will not disrupt the existing balance between federal and state judicial responsibilities over similar disputes.

BANKRUPTCY JURISDICTION

19. The claims asserted against the Defendants in this action are removable based on federal bankruptcy jurisdiction, pursuant to 28 U.S.C. §§ 157, 1331, 1334, 1441, and 1452, and Rule 9027 of the Federal Rules of Bankruptcy Procedure, because this is a civil action "related to" one or more cases under the Bankruptcy Code. *See* 28 U.S.C. § 1334(b).

20. This action purports to seek relief on behalf of borrowers, wherever located, of non-prime residential mortgage loans involving owner-occupied properties. Many of those borrowers have filed bankruptcy proceedings in United States bankruptcy courts within the last four years. Since July 2004, one or more Defendants have serviced 2,445,172 non-prime mortgage loans with property addresses in California. Of those 2,445,172 loans, 17,457 involved borrowers ("debtors") who have sought relief in United States bankruptcy courts.

21. Some or all of the claims asserted in the instant case are pre-petition assets that belong to the estates of bankrupt borrowers rather than to the bankrupt borrowers individually. These claims are property of the bankruptcy estates under 11 U.S.C. §§ 541

[2] *Hursh* is being designated as a related case pursuant to Local Rule 40.1(e) because it arises from the same transactions, happenings, and events and advances factual and legal claims that are substantially similar to those asserted in Plaintiff's complaint.

and 1306(a). Even though some of the bankruptcy cases have been closed or the debtors have been discharged, the claims remain the property of the bankruptcy estates, and not of the individual debtors, if the debtors failed to schedule those claims under 11 U.S.C. § 521(1) and/or those claims were not exempt or were not administered or abandoned during the bankruptcy case. 11 U.S.C. § 554(d). To the extent a debtor in a pending or previous bankruptcy case has raised claims similar to those raised in this case, the claims are part of the estate or are already at issue in bankruptcy cases. This Court has original and exclusive jurisdiction over claims and over property of the various bankruptcy cases filed in this district, including the claims asserted in the instant (state court) case filed by the San Diego City Attorney.

22. Although filed by the San Diego City Attorney, this action is not a regulatory or police-power action under 28 U.S.C. § 1452(a) because it seeks to protect a pecuniary interest in property of the debtors or their bankruptcy estates. Thus, this action is not properly understood as an exercise of police or regulatory power. *See Fed. Trade Comm'n v. First Alliance Mortg. Co. (In re First Alliance Mortg. Co.)*, 264 B.R. 634, 646 (C.D. Cal. 2001) (citing legislative history of the police power removal exception stating that it "is intended to be given a narrow construction in order to permit governmental units to pursue actions to protect public health and safety and not to apply to actions by a governmental unit to protect a pecuniary interest in property of the debtor, or property of the estate."). Accordingly, bankruptcy removal is proper here.

Dated: July 25, 2008

Respectfully submitted, (faxed)

By: Paul G. McNamara /CMD
Paul G. McNamara

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COUNTRYWIDE FINANCIAL CORPORATION and BANK OF AMERICA CORPORATION

LA2:866128.3

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation; BANK OF AMERICA, a Delaware corporation; ANGELO MOZILO, an individual; DAVID SAMBOL, an individual; STANFORD KURLAND, an individual; CARLOS GARCIA, an individual; DOES 1-200, and ROES 1-500, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PEOPLE OF THE STATE OF CALIFORNIA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso):
37-2008-00088176-CU-BT-CTL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
Hall of Justice, 330 W. Broadway, San Diego, CA 92101-3827

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
MICHAEL J. AGUIRRE, City Attorney State Bar No. 60402
CHRISTOPHER S. MORRIS, Assistant City Attorney
MARGARET G. JACOBO, Assistant City Attorney
DIANE SILVA-MARTINEZ, Head Deputy City Attorney
DAVID J. KARLIN, Head Deputy City Attorney
1200 Third Ave., Ste. 700, San Diego, CA 92101 (619) 533-5500 Fax: (619) 533-5505

DATE: July 23, 2008 JUL 23 2008
(Fecha)

Clerk, by D. Smith, Deputy
(Secretario) *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
MICHAEL J. AGUIRRE, City Attorney State Bar No. 60402
CHRISTOPHER S. MORRIS, Assistant City Attorney
MARGARET G. JACOBO, Assistant City Attorney
DIANE SILVA-MARTINEZ, Head Deputy City Attorney
DAVID J. KARLIN, Head Deputy City Attorney
1200 Third Avenue, Ste. 700, San Diego, CA 92101

TELEPHONE NO.: (619) 533-5500 FAX NO.: (619) 533-5505
ATTORNEY FOR (Name): Plaintiff People of the State of California

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **San Diego**
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA
BRANCH NAME: Hall of Justice

CASE NAME: People v. Countrywide Financial Corporation, et al.

CIVIL CASE COVER SHEET
[X] **Unlimited** (Amount demanded exceeds $25,000) [ ] **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] **Counter** [ ] **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2008-00088176-CU-BT-CTL
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [X] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [X] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [X] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [X] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: one
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: July 23, 2008
David J. Karlin, Head Deputy City Attorney
(TYPE OR PRINT NAME)

▶ David
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7066

PLAINTIFF(S) / PETITIONER(S): People of the State of California

DEFENDANT(S) / RESPONDENT(S): Countrywide Financial Corporation et.al.

PEOPLE OF THE STATE OF CALIFORNIA VS. COUNTRYWIDE FINANCIAL CORPORATION

NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00088176-CU-BT-CTL

Judge: Charles R. Hayes Department: C-66

COMPLAINT/PETITION FILED: 07/23/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

MICHAEL J. AGUIRRE, City Attorney
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CHRISTOPHER S. MORRIS, Assistant City Attorney
MARGARET G. JACOBO, Assistant City Attorney
DIANE SILVA-MARTINEZ, Head Deputy City Attorney
DAVID J. KARLIN, Head Deputy City Attorney

Office of the City Attorney
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NO FEE GC § 6103

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation; BANK OF AMERICA, a Delaware corporation; ANGELO MOZILO, an individual; DAVID SAMBOL, an individual; STANFORD KURLAND, an individual; CARLOS GARCIA, an individual; DOES 1-200, and ROES 1-500, inclusive, Defendants.	Case No. 37-2008-00088176-CU-BT-CTL **COMPLAINT FOR INJUNCTION, RESTITUTION, OTHER EQUITABLE RELIEF, AND CIVIL PENALTIES** I/C Judge: Dept.: Action Filed: Trial Date: Not Set

Michael J. Aguirre, acting in his official capacity as City Attorney for the City of San Diego, brings this action in the name of the People of the State of California ("Plaintiff"). Plaintiff is informed and believes, and based on such information and belief, alleges the following:

I. NATURE AND SUMMARY OF ACTION

1. Defendant Countrywide Financial Corporation and its agents, officers, employees, and affiliated or associated parties engaged in a pattern of unlawful, fraudulent or unfair

predatory real estate lending practices causing victims of such behavior, in the City of San Diego, to lose or be in jeopardy of losing their homes though foreclosure.

2. As demonstrated in Exhibit 1, attached hereto, foreclosures have occurred throughout San Diego County. Particularly hard hit are neighborhoods located in the southern and southeastern portions of the City of San Diego.

3. Defendants' unlawful, fraudulent or unfair "predatory" lending practices directed against San Diego home purchasers and homeowners involved one of the following elements:

a. Making loans based predominantly on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms;

b. Inducing the borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or

c. Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation.

4. The goal of Countrywide's unlawful, fraudulent, or unfair "predatory" lending practices was to increase the Company's share of the national mortgage market by mass producing loans for sale on the secondary market. In this scheme, borrowers were nothing more than the means for producing more loans. Countrywide originated loans with little or no regard for the borrowers' financial ability to afford the loans or to sustain homeownership.

5. Defendants were also motivated to engage in the unlawful, fraudulent or unfair business practices for personal, financial benefit. As a result of directing Countrywide to engage in unlawful, fraudulent, and unfair business practices as alleged in this Complaint, the Individual Defendants, named below, personally benefited in the total sum exceeding $800 million.

6. This action is brought to enjoin Countrywide from initiating or advancing any foreclosure on any residential mortgage involving properties which are owner occupied in the City of San Diego when the residential mortgage contains the following characteristics:

a. The loan is an adjustable rate mortgage ("ARM") with an introductory rate period of three years or less;

b. The loan has an introductory or "teaser" rate for the initial period that is at least 3 percent lower than the fully indexed rate;

c. The borrower has a debt-to-income ratio that would have exceeded 50 percent if the lender's underwriters had measured the debt, not by the debt due under the teaser rate, but by the debt due under the fully indexed rate; and

d. The loan-to-value ratio is 100 percent or the loan carries a substantial prepayment penalty or a prepayment penalty that extends beyond the introductory period.

II. DEFENDANTS AND VENUE

7. Defendant Countrywide Financial Corporation ("Countrywide" or "CFC" or the "Company") is a corporation organized and existing under the laws of the State of Delaware that transacted business in the County of San Diego, State of California and elsewhere in the United States and internationally. CFC carried out the unlawful, fraudulent, or unfair predatory lending practices though several divisions and subsidiaries including, but not limited to, Countrywide Home Loans, Inc. ("CHL"), a New York corporation; Full Spectrum Lending, Inc. ("Full Spectrum"), either as a California corporation or as a division of CHL.

8. Defendant Bank of America Corporation ("BofA") is a corporation organized and existing under the laws of the State of Delaware. At all relevant times, BofA has transacted and continues to transact business in the City of San Diego. In January 2008, BofA announced that it had entered into an agreement to acquire Countrywide in an all-stock deal. It is believed that BofA's purchase of Countrywide was completed on July 1, 2008. BofA is named as a Defendant solely due to its purchase of Countrywide.

9. Defendant Angelo R. Mozilo ("Mozilo") was a CFC director and has been since 1969. Defendant Mozilo is a co-founder of Countrywide and has been Chairman of the Board of the CFC since March 1999 and Chief Executive Officer of the CFC since February 1998. Defendant Mozilo was also President of the CFC from March 2000 through December 2003, and served in other executive capacities since the Company's formation in March 1969. Defendant Mozilo directed, authorized, and ratified the conduct of CFC as set forth herein. During the relevant time period, Defendant Mozilo sold over 12.8 million shares of Countrywide stock for

proceeds in excess of $474 million. Defendant Mozilo resides in the County of Ventura, California.

10. Defendant David Sambol ("Sambol") is a CFC director and has been since September 2007. Defendant Sambol joined CFC in 1985. Defendant Sambol served as Executive Managing Director of Business Segment Operations, leading all revenue generating functions of the Company, as well as the corporate operational and support units comprised of Administration, Marketing and Corporate Communications and Enterprise Operations and Technology. Defendant Sambol is currently President and Chief Operating Officer ("COO") for CFC. Defendant Sambol also serves as Chairman and CEO of CHL, where he directed, authorized and ratified the conduct of CHL. Sambol admittedly "leads all operations of the Company" and has "oversight responsibility" for CHL, as well as CFC's bank, CFC's insurance group, CFC's Capital Markets Division and CFC's Global Operations Division. During the relevant time period, Defendant Sambol sold over 1.4 million shares of Countrywide stock for proceeds in excess of $54 million. Defendant Sambol resides in the County of Los Angeles, California.

11. Defendant Stanford L. Kurland ("Kurland") resigned from the position of President and Chief Operating Officer ("COO") of CFC in September 2006. Defendant Kurland began his career with CFC in 1979, and served in a number of executive positions, including President of CHL, Senior Managing Director of Finance, Chief Financial Officer ("CFO") and Vice President-Controller. During the relevant time period, Defendant Kurland sold over 5.1 million shares of Countrywide stock for proceeds in excess of $185 million. Defendant Kurland resides in the County of Los Angeles, California.

12. Defendant Carlos M. Garcia ("Garcia") joined the CFC in 1984 and oversaw all corporate operations, including the e–Business Division, Finance, Administration, Human Resources, and Information Technology. Defendant Garcia has served as Chief Financial Officer ("CFO") of CFC and as a member of the board of directors for CFC Capital Markets, Inc., and as CEO of CFC Insurance Group, Inc. Defendant Garcia is currently Chairman of CFC Bank, FSB. Defendant Garcia also serves as Executive Managing Director, Chief of Banking

and Insurance for CFC Financial Corporation and Chairman of Balboa Insurance Group, Inc. Defendant Garcia further serves as a member of the CFC Committee. During the relevant time period, Defendant Garcia sold over 1.2 million shares of Countrywide stock for proceeds in excess of $50 million. Defendant Garcia resides in the County of Los Angeles, California.

13. Defendants Mozilo, Sambol, Kurland and Garcia may also be referred to collectively as the "Individual Defendants."

14. The Individual Defendants, by reason of their positions as directors and/or officers and fiduciaries of Countrywide and because of their ability to control the business, corporate and financial affairs of the Company, were to ensure that Countrywide was managed and operated in compliance with all applicable federal and state laws, rules and regulations.

15. The true names of Defendants DOES 1 through 200, who joined in the unlawful, fraudulent, or unfair predatory lending practices as officers, agents, employees, associated parties, or affiliates of the above-named Defendants, are currently unknown to the People, who, therefore, sue such Defendants by their fictitious names. The People will seek leave to amend this Complaint to allege the true names of DOES 1 through 200 when the same have been ascertained. The People are informed and believe, and based on such information and belief, alleges that each of the fictitiously named Defendants participated in some or all of the acts alleged herein.

16. The true names of Defendants ROES 1 through 500, who otherwise assisted above-named Defendants who either engaged in the unlawful, fraudulent, or unfair predatory lending practices, or aided and abetted in the same by investing in the mortgage-backed securities, are currently unknown to the People, who, therefore, sue such Defendants by their fictitious names. ROES 1 through 500 may be discovered to be "securitizers" – investment banking firms from Wall Street and elsewhere that actually provided the cash used to make Countrywide's loans. The People will seek leave to amend this Complaint to allege the true names of ROES 1 through 500 when the same have been ascertained. The People are informed and believe, and based on such information and belief, alleges that each of the fictitiously named Defendants participated in some or all of the acts alleged herein.

17. At all relevant times, each of the Defendants acted as the principal, agent, or representative of each of the other Defendants, and in doing the acts herein alleged, each Defendant was acting within the course and scope of the agency relationship with each of the other Defendants, and with the permission and ratification of each of the other Defendants.

18. At all relevant times, Defendants have controlled, directed, formulated, known and/or approved of the various acts and practices of each of the Defendants.

19. Whenever reference is made in this Complaint to any act of any corporate or other business defendant, such allegation shall mean that the corporation or other business did the acts alleged through its officers, directors; employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.

20. At all relevant times, each Defendant knew or realized that the other Defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or realizing that other Defendants were engaging in or planning to engage in unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and thereby aided and abetted the other Defendants in the unlawful conduct.

21. At all relevant times, Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in this Complaint. The conspiracy, common enterprise, and common course of conduct continue to the present.

22. Whenever reference is made in this Complaint to any act of Defendants, such allegations shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.

23. At all times mentioned in this Complaint, Defendants transacted business within and from the City of San Diego, State of California, and the violations of law described herein were committed within and from the City of San Diego, State of California.

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III. FACTUAL ALLEGATIONS

24. The factual allegations contained herein are based on the following: (a) an investigation conducted by the San Diego City Attorney's Office; (b) the review of public records in San Diego County; (c) allegations contained within the matter of the *People of the State of California v. Countrywide Financial Corporation*, Case No. LC081846, filed in the Superior Court of the State of California, County of Los Angeles; (d) allegations contained with the matter of *In re Countrywide Financial Corp. Derivate Litigation*, Case No. 07-CV-06923-MRP-(MANx), in the United States District Court for the Central District of California, that has be found sufficient to state a securities violations claim (*see In re Countrywide Financial Corp. Derivate Litigation*, 2008 WL 2064977 (C.D. Cal. May 14, 2008)); (e) allegations contained with the matter of *Commonwealth v. Fremont Inv. & Loan*, 2008 WL 517279 (Mass.Super. Feb. 26, 2008); and (f) allegations contained with the matter of *M & T Mortgage Corp. v. Foy*, 858 N.Y.S.2d 567 (2008). As such, the allegations contained herein are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

A. Countrywide's Residential Mortgage Operations

25. Countrywide was one of the largest residential mortgage lenders in the United States, responsible for originating and/or servicing over 18% of residential mortgages nationally.

26. Countrywide managed its business through five divisions: (1) Mortgage Banking, which originated, purchased, sold and serviced non-commercial mortgage loans nationwide; (2) Banking, which was a federally registered banking institution that took deposits and invested in mortgage loans and home equity lines of credit ("HELOCs"), principally those issued by the Company's Mortgage Banking division but also through third party issued mortgages; (3) Capital Markets, which operated an institutional broker-dealer specializing in underwriting and trading mortgage-backed securities ("MBS"); (4) Insurance, which provided property, casualty, life, and disability insurance as well as reinsurance coverage to primary mortgage insurers; and (5) Global Operations, which licensed proprietary software to mortgage businesses abroad.

27. Countrywide typically originated residential loans in the Mortgage Banking division, kept a portion of those loans on its balance sheet as investments, primarily in the Banking Division, and securitized and sold off the remainder of the mortgages or mortgage related rights and obligations to third parties, through the Capital Markets division.

28. Countrywide originated residential mortgage loans and HELOCs through both wholesale and retail channels. In the wholesale channel, employees worked closely with a nationwide network of mortgage brokers to originate loans. In the retail channel, employees in Countrywide's Consumer Markets Division sold loans directly to consumers. Full Spectrum employees also sold loans directly to consumers as part of Countrywide's retail channel.

29. Over the years, the residential mortgage banking business evolved from one in which lenders originated mortgages for retention in their own portfolios to one in which lenders originate loans for resale to the secondary mortgage market.

30. During the relevant time period, many of the residential mortgages originated Countrywide were sold into the secondary mortgage market, primarily in the form of securities and to a lesser extent in the form of whole loan sales.

31. Although the mortgages which it originated were generally sold into the secondary mortgage market, Countrywide typically performed the ongoing servicing functions related to the residential mortgage loans that it produced.

32. Mortgages are "securitized" when loans are pooled together and transferred to a trust controlled by the securitizer, such as Countrywide. The trust then creates and sells securities backed by the loans in the pool. Holders of the securities received the right to a portion of the monthly payment stream from the pooled loans, although they were not typically entitled to the entire payment stream. Rather, the holders received some portion of the monthly payments. The securitizer, or the trust it controls, often retains an interest in any remaining payment streams not sold to security holders. These securitizations could involve the pooling of hundreds or thousands of loans, and the sale of many thousands of shares.

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B. Countrywide Shifts Its Strategy From <u>Traditional Loans To Risky Non-Traditional Loans</u>

33. Through 2003, Countrywide primarily made traditional first lien home loans to highly creditworthy individuals. These "conforming" loans are safer from a credit perspective. Conforming loans are also easily sold to Fannie Mae and Freddie Mac, government-sponsored entities that provide liquidity to the market for home mortgages.

34. Beginning in 2003 and carrying into the relevant time period, Countrywide moved to originating more non-conforming loans. This exposed Countrywide to more risky loans, with higher default rates. Moreover, these loans could not be sold to government-sponsored entities (like Fannie Mae and Freddie Mac), but had to be sold to private institutional investors.

35. At the same time, Countrywide was also pursuing a dramatic shift in strategic direction away from traditional fixed-rate home loans to borrowers with "prime" credit scores, in favor of a wide range of non-traditional, high-risk home loans designed to allow borrowers from all credit levels to borrow more money for home purchases than would have been available under traditional fixed product lending guidelines.

36. Mortgage brokers and other employees were compensated based on the volume of loans originated and received higher payments when selling these non-traditional loan products than they would selling standard loans. Accordingly, Countrywide's employees targeted more and more borrowers who were stretching to afford the loans – many of whom had no realistic ability to repay the loans.

37. Examples of these "non-traditional" loan products include:

a. Adjustable rate mortgages ("ARMs"), which typically provide for a low "teaser" interest rate for a predetermined introductory time period, ranging between 2 to 10 years. The majority of ARMs sold to subprime borrowers were called "2/28 loans," meaning that the teaser rate lasts for only two years before "resetting" to higher rates, which are typically tied to specified benchmarks or other criteria, as dictated by the fine print in the loan documentation. As a result, borrowers' monthly obligations would often increase dramatically after the introductory period.

b. Interest-only mortgages, which allow the borrower to pay only the interest accruing on the loan on a monthly basis for a predetermined time period. Thus, the loan principal balance remains constant. At the end of the initial time period, borrowers have to pay interest plus principal, and the interest may adjust depending on whether the loan is a fixed rate or ARM.

c. Pay-Option ARMs, which give the borrower the "option" whether to pay down loan principal, to make the monthly interest payment, or to make a "minimum" payment that is less than the interest accruing that month. If a borrower makes only the "minimum" payment, the difference between that amount and the monthly interest payment is added to the remaining loan principal. Thus, while a standard mortgage loan amortizes as principal is paid down and an "interest only" mortgage is non-amortizing, Pay-Option ARMs are subject to negative amortization, *i.e.*, the principal balance increases when interest payments are "skipped."

d. Stated income loans, which are based on a borrower's representations about ability to pay, with little or no documentation from the borrower to substantiate those representations. In these loans, the lender typically agrees not to inquire behind the borrower's represented income, leading many to call these products "liar loans."

e. Home equity lines of credit ("HELOCs"), which are second loans secured only by the difference between the value of a home and the amount due on a first mortgage. Upon a default and foreclosure, the HELOC lender receives proceeds from the sale of the underlying home only after the first lien holder is paid in whole. HELOCs sit in the "first loss" position. Therefore, even a 10-20% reduction in home prices can have a dramatic effect on the collateral securing HELOCs – resulting in the entire amount of the HELOC becoming unsecured.

38. Beginning in 2003, Countrywide substantially increased its production of non-traditional, high-risk mortgages – both in absolute dollar amounts and as a percentage of the company's total mortgage origination. The table below sets forth the company's non-traditional mortgage originations – loans which are particularly sensitive to a drop in housing prices and/or an interest rate increase:

	2002	2003	2004	2005	2006
Adjustable-Rate Loans as % of Total Loans Originated	14%	21%	52%	52%	45%
HELOCS as % of Total Loans Originated	4.6%	4.2%	8.5%	9.0%	10.2%
Non-Prime Loans as % of Total Loans Originated	3.7%	4.6%	10.9%	8.9%	8.7%

39. The following chart illustrates how Countrywide's origination of HELOCs, non-prime mortgages, and ARMs grew in absolute numbers and as a percentage of the company's total mortgage origination before and during the relevant time period.

Mortgage Loan Production Years Ended December 31,					
	2002	2003	2004	2005	2006
	(in millions)				
Total Mortgage Loans	**$251,901**	**$434,864**	**$363,364**	**$499,301**	**$468,172**
HELOC (% of total)	**11,650** **(4.6%)**	**18,103** **(4.2%)**	**30,893** **(8.5%)**	**44,850** **(9.0%)**	**47,876** **(10.2%)**
Nonprime Mortgage (% of total)	**9,421** **(3.7%)**	**19,827** **(4.6%)**	**39,441** **(10.9%)**	**44,637** **(8.9%)**	**40,596** **(8.7%)**
Pay-option ARMs as a % of total	**N/A**	**N/A**	**6%**	**19%**	**14%**
Adjustable-Rate Loans as a % of total	**14%**	**21%**	**52%**	**52%**	**45%**

40. Countrywide increased its production of these loans by offering them to persons who could not or would not provide documentation of their income. In 2004, 78% of the Pay-Option ARMs originated by Countrywide were "low-doc" mortgages in which the borrower did not fully document income or assets. This number grew to 91% in 2006. According to the Company's Form 10-Q filed with the SEC on November 9, 2007, by the end of 2006, 81% of the

Pay-Option ARMs held for investment by the Countrywide were loans with low or no stated income documentation. Countrywide also increased its origination of Pay-Option ARMs by allowing borrowers to obtain Pay-Option ARMs without making substantial down payments.

41. At the time the Countrywide was growing the amount of risky loans it originated, it was increasing the amount of Pay-Option ARMs held by the Company for investment. Pay-Option ARM loans represented 46% of the mortgage loans held for investment on December 31, 2006. As set forth below, the amount of Pay-Option ARMs held by Countrywide for investment grew significantly during the Relevant Period (in $ millions):

	2003	2004	2005	2006
PAY-OPTION ARMS HELD FOR INVESTMENT	N/A	4,698	26,101	32,732

C. Countrywide Deviates Significantly From Its Underwriting Standards In Order To Capture Greater Market Share

42. As Countrywide shifted to selling riskier, non-traditional loan products, it also transitioned into predatory lending practices. A substantial and material percentage of the residential loans originated by Countrywide during the relevant period involved significant variations from the Company's underwriting standards.

43. The active monitoring and control over Countrywide's underwriting and credit risk assessment processes was particularly important with respect to the Company's strategic shift favoring the origination of high-risk, non-traditional loans such as Pay-Option ARMs. In theory, if borrowers are good credit risks and reasonably sophisticated, they can make their mortgage payment options as needed to manage their cash flow needs over time. However, the risk becomes very significant if Countrywide sold Pay-Option ARMs: (1) to riskier borrowers (including those who would struggle even to make the minimum monthly interest payment); (2) at greater than expected loan to value ("LTV")(*i.e.*, the ratio of the loan amount to the appraised home value); and/or (3) based on limited if any documentation of income and repayment ability.

Yet, Countrywide failed to adopt strong internal controls necessary to adequately manage the risks associated with these products.

44. In carrying out its lending practices, Countrywide and its affiliated and associated parties failed to comply with prudent lending standards as follows:

a. Loan decisions were not based upon all relevant factors including the capacity of the borrower to adequately service the debt. For example, borrowers were entering into Pay-Option ARMs were very likely to experience "payment shock" when the loans reset. Under these circumstances, prudent qualifying standards would recognize the potential effect of payment shock in evaluating a borrower's ability to service debt;

b. A borrower's repayment capacity was not evaluated in terms of the borrower's ability to repay the debt by its final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule;

c. Borrowers were not qualified based upon the quantification of the borrower's repayment capacity by a debt-to-income (DTI) ratio, which should have included an assessment of a borrower's total monthly housing-related payments (*e.g.*, principal, interest, taxes, and insurance, or what is commonly known as PITI) as a percentage of gross monthly income. This was not done even when there was additional risk-layering such as reduced documentation, or simultaneous second lien mortgages.

45. Even when these risk-layering features were present, there was an absence of mitigation factors to support Countrywide's underwriting decisions. Thus, the borrowers' repayment capacity was not verified, the borrowers' income (source and amount) was not checked, and the borrower's assets and liabilities were not confirmed.

46. Countrywide also regularly approved "stated income" or no-documentation loans even though the same applicant had been refused a loan under the Company's full-documentation loan program. In such instances, the Company's loan officers would "assist" the applicant in switching to a no-document loan.

47. Countrywide operated a computer system that routed highly risky loans out of the normal loan approval process and to a central underwriting group for evaluation. The system

was called the Exception Processing System. The Exception Processing System identified loans that violated the Company's underwriting requirements. For example, the system flagged loans in which the loan-to-value ratio was too high when compared with the borrower's FICO score. Flagged loan applications were then routed to the company's "Central Underwriting" group located in Plano, Texas (headquarters of the Retail Lending group).

48. There, loan applications identified by the Exception Processing System as violating the Company's underwriting standards were not rejected. Rather, the applications were evaluated on whether Countrywide should require a higher price (i.e., "up front points") or a higher interest rate in light of the violation at issue.

49. Furthermore, the Individual Defendants knew Countrywide was extending loans that did not comply with the Company's underwriting policies and procedures. Countrywide's approval of loans that it knew to be high risk and likely to end up in default demonstrated an utter disregard for the well-being of the borrower.

50. These practices also clearly demonstrated that almost anyone could get a loan, even if they had very little to no chance of paying it back.

51. Countrywide's strategic shift towards the relaxation of its underwriting and origination procedures was brought about to facilitate an increase in the Company's market share of the residential mortgage business. The Company pushed one goal above all others – originating loans and selling them to the secondary markets as fast as possible.

D. Countrywide Engages in Deceptive, Predatory Practices To The Detriment Of Borrowers

52. Countrywide also utilized deceptive lending practices to extend credit to individuals who did not understand the terms and dangers of the costly loans they could not afford. Countrywide's agents, associated parties, and affiliates used predatory lending practices in which borrowers were convinced to agree to unfair and abusive loan terms including interest rates and/or fees that were unreasonably high.

53. Countrywide's deceptive lending practices included (a) advertising that the Company, as the nation's largest lender, could be trusted by consumers; (b) encouraging

borrowers to refinance or obtain purchase money financing with complicated mortgage instruments like hybrid ARMs or Pay-Option ARMs that consumers did not understand; (c) marketing these complex loan products by emphasizing the very low initial "teaser" or "fixed" rates; (d) representing to borrowers that they could refinance prior to scheduled rate increases without disclosing the dangers of negative amortization or pre-payment penalties; and (e) routinely soliciting borrowers to refinance.

54. Defendants knew, or should have known, that Countrywide was required to operate within specific statutory and regulatory parameters limiting the interest rate and other fees that could lawfully be charged to borrowers as well as the types of selling practices that the Company could utilize.

55. Defendants knew that predatory lending practices were a significant problem in the industry, requiring they monitor the Company's lending practices closely.

56. Instead of closely monitoring the Company's lending practices, Defendants created and adopted an incentive compensation system that induced brokers and sales representatives to engage in predatory practices. For example, borrowers were routinely moved into the subprime category even if their financial position dictated that they belonged higher up on the loan spectrum. This occurred because the Company's brokers and sales representatives earned a greater commission by placing a borrower in a sub-prime loan. Brokers received commissions of 0.50% of the loan's value versus 0.20% on loans one step up the quality ladder, known as Alternate-A loans.

57. Countrywide's sale of ARMs provides another example of predatory lending practices exhibited by the Company. As described, these types of mortgages offered low initial payments based on a fixed introductory or "teaser" rate that expires after a short period, and then adjusts to a variable rate plus a margin for the remaining term of the loan. When the rate resets, borrowers experience "payment shock" and are unable to afford the higher payments. These types of loans were typically offered to subprime borrowers and issued with limited or no document basis. Additionally, ARMs typically carry substantial pre-payment penalties. Yet, the

borrowers of these loans are likely to have to resort to frequently refinancing in order to maintain an affordable monthly payment.

58. Countrywide deceptively marketed Pay-Option ARMs by aggressively promoting the teaser rate. Advertisement did not effectively distinguish between the "payment rate" and the interest rate on the loans, and any warnings about potential negative amortization.

59. Borrowers, enticed by the low teaser rate, did not fully understand the fine print in the loan documents or the financial implications of Countrywide's Pay-Option ARMs.

60. It is clear that borrowers did not understand the risks and consequences of obtaining this type of ARM loan. Borrowers who obtained these loans faced unaffordable monthly payments after the initial rate adjustment, difficulty in paying real estate taxes and insurance that were not escrowed, or expensive refinancing fees, any of which could cause borrowers to default and potentially lose their homes.

61. These consumers were not protected from unfair, deceptive, and other predatory lending practices. Countrywide failed to provide clear and balanced information about the risks and features of these loans to the detriment of its borrowers.

62. Compounding the predatory nature of Countrywide's lending practices, Countrywide aggressively marketed refinance loans to, among others, Countrywide's customers. Countrywide created a perpetual market for its refinance loans by selling Pay-Option and hybrid ARMs that borrowers would have to refinance in order to avoid payment shock. Countrywide knew that borrowers who could not afford the inevitable payment increase on such loans and who were unable to refinance would be at great risk of losing their homes.

63. Refinancing also served as a means to overcome a borrower's apprehension about purchasing a Pay-Option or hybrid ARM. Countrywide often overcame a borrower's concerns by promising the borrower that they would be able to refinance into a loan with more favorable terms before the rate reset and the monthly payments increased.

64. Countrywide failed to inform borrowers with interest-only or negative amortizing loans that refinancing was highly unlikely unless the value of their home increased. Further, Countrywide did not adequately inform borrowers about pre-payment penalties that would

essentially prevent many borrowers from refinancing prior to rates resetting and the accompanying payment explosion.

65. As a direct consequence of Countrywide's unfair, unlawful and fraudulent practices, borrowers were unable to afford the monthly payments after the initial rate adjustment due to payment shock. These borrowers also experienced difficulty in paying real estate taxes and insurance that were not escrowed. They incurred expensive refinancing fees, frequently due to closing costs and prepayment penalties. Ultimately, most borrowers ended up losing their homes.

66. Countrywide, on the other hand, continued its deceptive marketing practices for it cared only about doing whatever it took to increase the numbers of loans.

FIRST CAUSE OF ACTION

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

67. Plaintiff realleges paragraphs 1 through 66 of the Complaint and incorporates same by this reference as though fully set forth herein.

68. Beginning on an exact date unknown to Plaintiff, but within four years prior to the filing of this Complaint, and continuing to the present, Defendants engaged in unfair competition in violation of Business and Professions Code 17200, including, but not limited to, one or more unlawful, unfair or fraudulent business acts or practices:

a. By significantly deviating from traditional underwriting standards when originating non-traditional loan products such as Pay-Option ARMs and hybrid ARMs;

b. By ignoring internal controls that suggested certain loan applications be denied and funding those loan applications merely to increase market share;

c. By creating an incentive based compensation system that induced brokers and sales associates to engage in predatory practices; and

d. By utilizing deceptive lending practices including, but not limited to, (i) aggressively promoting introductory or teaser rates; (ii) by failing to provide clear and balanced information concerning the risks and features of its non-traditional loans; and (iii) by creating a

perpetual refinancing market for itself when placing borrowers in loans they had no ability to repay.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, DOES 1 through 200, and ROES 1 through 500, and each of them, on all causes of action as follows:

1. For judgment in favor of Plaintiff and against Defendants;

2. For a permanent injunction enjoining Defendants, their successors, assigns, agents, representatives, employees and all persons who act in concert with them from initiating or advancing any foreclosure on any residential mortgage involving properties which are owner occupied and where the following four factors exist:

a. The loan is an ARM with an introductory period of three years or less;

b. The loan has an introductory or "teaser" rate for the initial period that is at least 3 percent lower than the fully indexed rate;

c. The borrower has a debt-to-income ratio that would have exceeded 50% if the lender's underwriters had measured the debt, not by the debt due under the teaser rate, but by the debt due under the fully indexed rate; and

d. The loan-to-value ratio is 100% or the loan carries a substantial prepayment penalty or a prepayment penalty that extends beyond the introductory period.

3. For an order that Defendants can only reinitiate foreclosure proceedings on the above properties after showing proof to the City of San Diego that Defendants have met with the borrower and taken reasonable steps in an attempt to resolve their differences and avoid foreclosure.

4. For a permanent injunction enjoining Defendants, their successors, assigns, agents, representatives, employees and all persons who act in concert with them from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, the acts or practices alleged in this Complaint.

5. For the imposition of a civil penalty of $2,500 pursuant to Business and Professions Code section 17536 against each Defendant for each violation of Business and

Professions Code section 17500 as alleged in this Complaint. Plaintiff requests that civil penalty of no less than $100,000 be imposed against each Defendant.

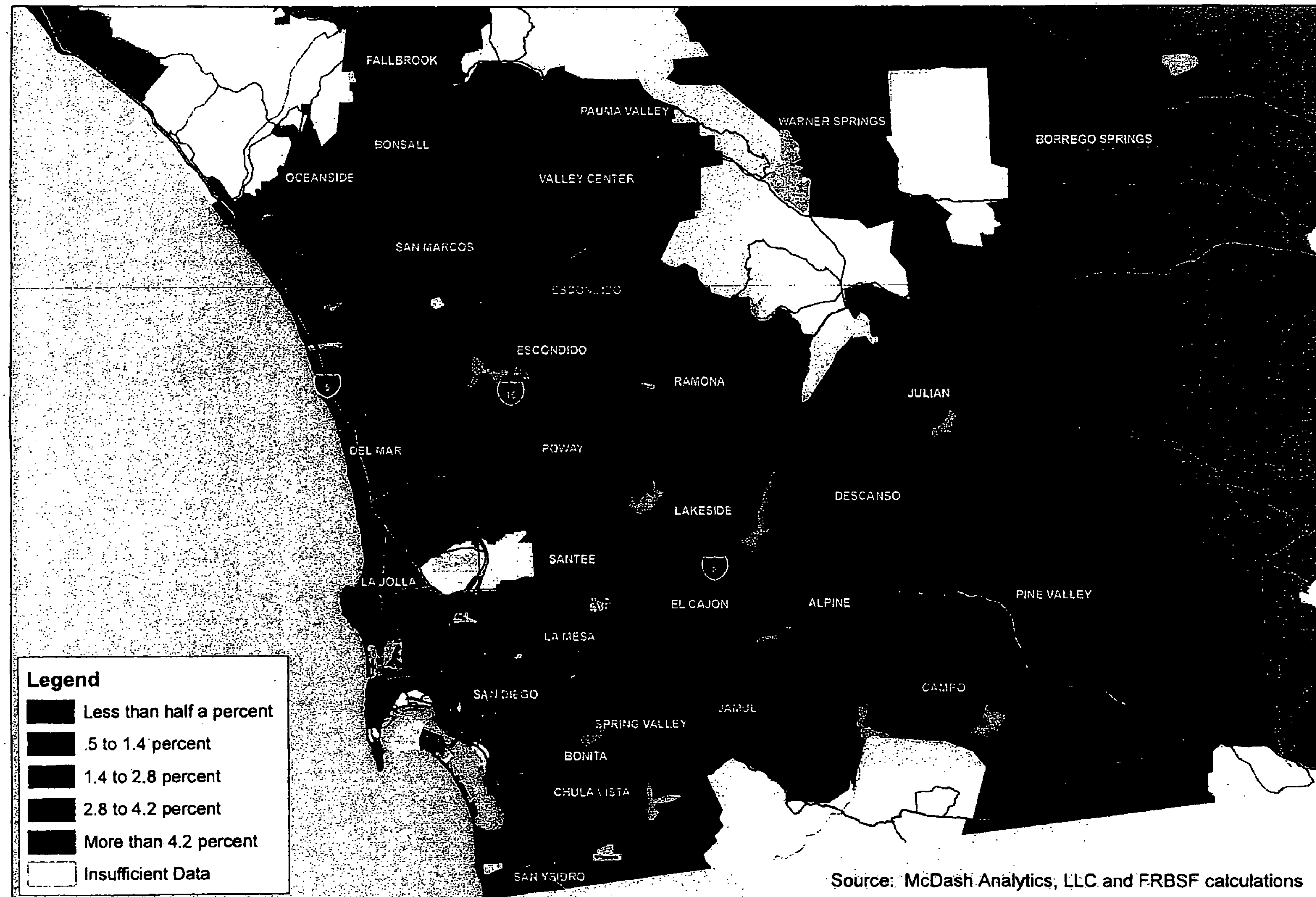
6. For costs of suit incurred herein; and

7. For such further and other relief as the Court deems just and proper.

Dated: 24 July 2008

MICHAEL J. AGUIRRE, City Attorney
Attorney for Plaintiff

Percent of Mortgage Loans in Foreclosure or REO (by zip code)
April 2008



Source: McDash Analytics, LLC and FRBSF calculations

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

 # 153394 - TC

July 25, 2008
15:35:19

Civ Fil Non-Pris
USAO #.: 08CV1348
Judge..: JANIS L. SAMMARTINO
Amount.: $350.00 CK
Check#.: BC1043

Total-> $350.00

FROM: STATE OF CA
VS.
COUNTRYWIDE FINANCIAL ET AL.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

FAXFILED

08 JUL 25 PM 3:30

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 1348 JLS BLM

DEPUTY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
PEOPLE OF THE STATE OF CALIFORNIA

DEFENDANTS
See attached.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael J. Aguiree, City Attorney (SB# 60402)
1200 Third Ave., Suite 700, San Diego, CA 92101 (619) 533-5500

Attorneys (If Known)
Paul G. McNamara (S.B. #106080) O'Melveny & Myers LLP
400 S. Hope St. Los Angeles, CA 90071 (213) 430-6000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS
PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus - Alien Detainee
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☒ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1601 et seq.; 12 U.S.C. § 2601 et esq.
Brief description of cause:
Truth in Lending Act; Real Estate Settlement Procedures Act

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Napoleon A. Jones DOCKET NUMBER 08 CV 1313 - J - NLS

DATE 07/25/2008
SIGNATURE OF ATTORNEY OF RECORD Paul G. McNamara / CMD (faxed)

FOR OFFICE USE ONLY
RECEIPT # 153394 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

TAC 7/25/08

DEFENDANTS:

COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation;
BANK OF AMERICA, a Delaware corporation;
ANGELO MOZILO, an individual;
DAVID SAMBOL, an individual;
STANFORD KURLAND, an individual;
CARLOS GARCIA, an individual;
DOES 1-200, and ROES 1-500, inclusive